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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
RONALD CRAIG ILG,
Defendant.

Case No. 2:21-cr-00049-WFN

RESPONSE TO UNITED STATES' MOTION TO ADMIT EVIDENCE OF SUICIDE ATTEMPT

COMES NOW, the Defendant Ronald C. Ilg, MD (“Dr. Ilg”), by and through his attorneys of record, and hereby submits the following Response to the United States’ Motion to Admit Evidence of Defendant’s Suicide Attempt (ECF No. 123). As explained fully below, the Government should be prohibited from arguing to the jury that Dr. Ilg’s alleged suicide attempt is evidence of guilt. *See* Fed. R. Evid. 403. At the time of the suicide attempt, Dr. Ilg was

1 suffering from prolonged depression and indicated to the Federal Bureau of
 2 Investigation (“FBI”) that he had suicidal ideations long before he was aware
 3 that he was the subject of investigation. *See State v. Mann*, 625 A.2d 1102,
 4 1108 (N.J. 1993) (“The possible ambiguity of an accused’s suicide attempt
 5 requires a careful consideration of the probative value such evidence offers.”);
 6 *accord State v. Onorato*, 762 A.2d 858, 859-60 (Vt. 2000) (“The underlying
 7 reasons motivating an attempt to take one’s life can be both numerous and highly
 8 complex, and may be even less indicative of guilt than flight evidence.”).¹

14

BACKGROUND

16 At approximately 5:00 pm on April 11, 2021, Dr. Ilg was interrogated by
 17 FBI Agents Eric Barker and Christian Parker at the Spokane International
 18 Airport. (See ECF No. 110-1.) During the course of the interrogation, Dr. Ilg
 19 expressly mentioned to the FBI Agents: “So about six to eight weeks ago, my
 20 depression was probably at its worst. And I hate to admit it, but I constantly
 21 contemplated suicide.” (ECF No. 110-1 at 24:23-25.) Further, Dr. Ilg stated:
 22 “my depression wasn’t getting any better over the last couple weeks, despite
 23 going up on my medication dose and visiting with my doctor.” (Id. at 28:9-12.)
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32 ¹ Out-of-jurisdiction authorities offered for persuasive purposes only.

1 Dr. Ilg allegedly indicated that he located a hitman on the dark web so his
 2 suicide “looked like [he] died from an accident.” (ECF No. 110-1 at 26:4-5.)
 3

4 Dr. Ilg further indicated:
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6 I thought my lawsuit could continue for my estate, and my life
 7 insurance would pay out. I also think—I’m not sure, but I think
 8 there’s a clause in my life insurance policy that if you die from
 9 suicide that it doesn’t pay out.
 10

(*Id.* at 26:10-14.) Dr. Ilg further stated that “the Bitcoin that I transferred was to
 11 negotiate an accident for myself.” (*Id.* at 47:16-17.) Dr. Ilg indicated during the
 12 course of the interview that he did not have “a clear mind.” (*Id.* at 63:8.)
 13

14 During the interaction with Dr. Ilg, the FBI acknowledged Dr. Ilg’s
 15 depression and mental state. For example, Agent Parker explicitly asked
 16 “what’s your mental state right now? . . . do we need to get rid of your
 17 weapons?” (ECF No. 110-1 at 52:14-16.) During the search of Dr. Ilg’s
 18 residence, law enforcement was “concerned that the suspect had claimed to be
 19 suicidal.” (Ex. A at p. 1.) Law enforcement “removed the firing bolt from [a]
 20 rifle . . . and also took the loaded pistol magazines.” (*Id.*) “These items were
 21 then placed in one of Ilg’s dresser drawers in an attempt to slow his process of
 22 utilizing them in the event he decided to harm himself or another.” (*Id.*)
 23

According to the Government, “[l]ater that very same evening—April 11, 2021—Defendant wrote out a note and placed on his kitchen counter next to FBI Special Agent Eric Barker’s business card.” (ECF No. 123 at 3.) The Government alleges that Dr. Ilg “took approximately 40 Xanax pills” and authored a note, which indicated in part:

[Witness 1], I love you with everything I have. I'm sorry. Please remember the good. I loved no other more than you.

[Victim 2], I loved you also. You mocked my love. You made fun of it. Why?? You laughed with your family + coworkers. Please care for [Minor 1] + love him like I do.

I am about to drift off to sleep. I pray that God forgives me. I pray with all my heart that He does. I did this not for me. But for all of you. You can move on faster + easier + quicker. I just wanted to norm [sic] back but I couldn't see the path. I fucked it up. Irreparable fuck up. [Victim 2], if it is allowed in my will[,] please share half with [Witness 1], somehow. She deserved that. [Victim 2], you have a big heart that I destroyed.

(ECF No. 123 at 3-4; *accord* ECF No. 72-4 at 71-72.)

The Government now seeks to admit evidence of Dr. Ilg's suicide attempt as alleged evidence of flight documenting a guilty mind.

POINTS & AUTHORITIES

Although determinations regarding the admissibility of evidence are left to the sound discretion of the Court, interpretations of the Federal Rules of

1 Evidence are subject to *de novo* review. *United States v. Waters*, 627 F.3d 345,
 2 352 (9th Cir. 2010). Pursuant to Fed. R. Evid. 403, the Court may exclude
 3 relevant evidence “if its probative value is substantially outweighed” by danger
 4 of “unfair prejudice.” Under Fed. R. Evid. 403, “[u]nfair prejudice’ refers to an
 5 ‘undue tendency to suggest decision on an improper basis, commonly though
 6 not necessarily, an emotional one’ or ‘evidence designed to elicit a response
 7 from the jurors that is not justified by the evidence.”” *United States v. Ellis*, 147
 8 F.3d 1131, 1135 (9th Cir. 1998). In other words, “unfair prejudice” refers to
 9 “the capacity of some concededly relevant evidence to lure the factfinder into
 10 declaring guilt on a ground different from proof specific to the offense charged.”
 11 *Old Chief v. United States*, 519 U.S. 172, 180 (1997). The determination of
 12 whether probative value is substantially outweighed by unfair prejudice requires
 13 an analysis of the argument presented to the jury regarding the evidence. See
 14 *United States v. Aims Back*, 588 F.2d 1283, 1286 (9th Cir. 1979) (court has
 15 authority to “limit or specify the purpose for which the evidence was admitted”);
 16 *accord* Fed. R. Evid. 403, *Advisory Committee Notes*.

17 “Evidence of flight is generally admissible as evidence of consciousness of
 18 guilt.” *United States v. Guerrero*, 756 F.2d 1342, 1347 (9th Cir. 1984). But
 19 “evidence of flight can be consistent with innocence” too. *United States v.*

1 *Dixon*, 201 F.3d 1223, 1232 (9th Cir. 2000). As such, the probative value of
 2 flight (*i.e.*, conduct) thus depends upon the degree of confidence with which
 3 four inferences can be draw: ““(1) from the defendant’s behavior to flight; (2)
 4 from flight to consciousness of guilt; (3) from consciousness of guilt to
 5 consciousness of guilt concerning the crime charged; and (4) from
 6 consciousness of guilt concerning the crime charged to actual guilt of the crime
 7 charged.”” *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1207 (9th Cir.
 8 1991) (quoting *United States v. Myers*, 550 F.2d 1036, 1049 (5th Cir. 1977)).
 9 Analysis of these circumstances presumes that actual flight is established, as
 10 opposed to a potentially innocent act. *See United States v. Greiser*, 502 F.2d
 11 1295, 1299 (9th Cir. 1974) (“the fact of an accused’s flight, escape from
 12 custody, resistance to arrest, concealment, assumption of a false name, and
 13 related conduct, are admissible as evidence of consciousness of guilt”).
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15 The United States does not cite to explicit authority in the Ninth Circuit
 16 analyzing whether an attempted suicide is considered flight and evidence of
 17 guilt. (*See* ECF No. 123.) In this vein:
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19 [S]ome courts have recognized that a suicide or attempted suicide is
 20 admissible as evidence of “consciousness of guilt,” tantamount to a
 21 confession. . . . Some courts, however, have recognized that such
 22 evidence is at best equivocal, in the absence of evidence of the
 23 reasons for the suicide or attempted suicide, because there could be

1 numerous reasons for a suicide attempt other than consciousness of
 2 guilt on a charged offense.

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 4 *United States v. Johnson*, 354 F. Supp. 2d 939, 957–58 (N.D. Iowa 2005), *aff'd*
 5 *in part*, 495 F.3d 951 (8th Cir. 2007). Other Circuits have held that “suicidal
 6 ideations and/or attempts may be admissible as relevant evidence of
 7 consciousness of guilt, but only after being screened through typical Rule 403
 8 balancing in accordance with . . . jurisprudence on the admissibility of flight
 9 evidence.” *United States v. Cody*, 498 F.3d 582, 592 (6th Cir. 2007).

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 11 The Court should carefully consider the totality of the circumstances to
 12 determine if the probative value of a suicide attempt as flight is substantially
 13 outweighed by the prejudicial effect that the defendant will be portrayed to the
 14 jury as a suspect that is so obviously guilty the only way to escape prison is to
 15 commit suicide. *See Fed. R. Evid. 403; see also State v. Mann*, 625 A.2d 1102,
 16 1108 (N.J. 1993) (“The possible ambiguity of an accused's suicide attempt
 17 requires a careful consideration of the probative value such evidence offers.”).

18
 19 Accusation and the threat of prosecution and punishment may
 20 impel a defendant to attempt suicide. Alternatively, an urge to
 21 confess or repent for a guilty deed may materialize as an admission
 22 by suicidal conduct. However, other factors may motivate or
 23 contribute to an accused's decision to attempt suicide. Instead of
 24 seeking to avoid punishment, a defendant who attempts suicide
 25 may, for reasons unrelated to the crime charged, choose to inflict

1 upon himself or herself a punishment more severe than that
 2 following a conviction of the charge.

3 *Mann*, 625 A.2d at 1108; *accord State v. Onorato*, 762 A.2d 858, 859-60 (Vt.
 4 2000) (“The underlying reasons motivating an attempt to take one's life can be
 5 both numerous and highly complex, and may be even less indicative of guilt
 6 than flight evidence.”). In this vein, “a defendant's psychological, social or
 7 financial situation may underlie a suicide attempt.” *Mann*, 625 A.2d at 1108.
 8
 9 Similarly, evidence of a suicide attempt “could also demonstrate lack of faith in
 10 the judicial system.” *Johnson*, 354 F. Supp. 2d at 958.

11
 12 The Government argues that “Defendant's attempted suicide or flight
 13 occurred almost immediately after he was confronted with evidence that he was
 14 soliciting a number of hitmen to assault a former colleague and to kidnap his
 15 then-estranged wife.” (ECF No. 123 at 1.) However, Dr. Ilg expressly indicated
 16 during the FBI interrogation that he had ”contemplated suicide,” his “depression
 17 wasn't getting any better,” and he was “going up on [his] medication dose and
 18 visiting with [his] doctor.” (ECF No. 110-1 at 24:23-25 and 28:9-12.)
 19
 20 Furthermore, Dr. Ilg allegedly indicated that he went on the dark web to hire a
 21 hitman to commit suicide, so it “looked like [he] died from an accident.” (*Id.* at
 22 30)
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1 26:4-14.) Moreover, the FBI expressed concern regarding Dr. Ilg's mental state
 2 and that he may be suicidal. (*See, e.g.*, Ex. A at p. 1.)
 3

4 Dr. Ilg's suicide note indicates "I pray that God forgives me" and that he
 5 "did this . . . for all of you" so his family "can move on faster + easier +
 6 quicker." (ECF No. 123 at 3-4.) Dr. Ilg's attempted suicide is not admissible to
 7 show evidence of flight as his reason(s) for attempting suicide dealt with
 8 preexisting depression, separate from the pending criminal investigation. *See*
 9 *Onorato*, 762 A.2d at 859-60 ("The underlying reasons motivating an attempt to
 10 take one's life can be both numerous and highly complex, and may be even less
 11 indicative of guilt than flight evidence."); *accord Mann*, 625 A.2d at 1108 ("a
 12 defendant's psychological, social or financial situation may underlie a suicide
 13 attempt"). In relation to such an argument pertaining to flight, the probative
 14 value that Dr. Ilg attempted suicide because he is guilty is substantially
 15 outweighed by its prejudicial effect that the jury improperly surmise that Dr. Ilg
 16 was attempting to escape punishment by any means. *See id.* As such, the
 17 Government must be prevented from arguing at the time of trial that Dr. Ilg's
 18 attempted suicide shows evidence of flight. *See Fed. R. Evid. 403.*
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20 Moreover, the Government requests a flight jury instruction. (*See ECF No.*
 21 *123 at 9.*) In the Ninth Circuit, "[f]light instructions are valid only if there is
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evidence sufficient to support a chain of unbroken inferences from the defendant's behavior to the defendant's guilt of the crime charged.”” *United States v. Blanco*, 392 F.3d 382, 395 (9th Cir. 2004); *accord United States v. Feldman*, 788 F.2d 544, 555 (9th Cir. 1986) (a flight instruction “is valid only when the links along the extended chain of inference from the defendant's behavior to actual guilt of the crime charged are unbroken, and when the defendant's flight reaction is immediate to the crime”). As such, Ninth Circuit Model Criminal Jury Instruction No. 3.18 provides: “The Committee generally recommends against giving specific inference instructions in areas such as flight or concealment of identity because the general instruction on direct and circumstantial evidence is sufficient.” Therefore, not only is attempted suicide not necessarily evidence of flight, but the Ninth Circuit² advises against an instruction in even apparent flight or concealment circumstances.

CONCLUSION

For the reasons indicated herein, Dr. Ilg respectfully requests that the Court prohibit the Government from arguing that Dr. Ilg’s attempted suicide

² Assuming *arguendo* the Court determines that such an instruction is appropriate, the Court should also “instruct the jury that if it credits any alternative explanation offered by the defendant, it may not infer consciousness of guilt from the evidence of a suicide attempt.” *Mann*, 625 A.2d at 1109.

1 constitutes flight and evidence of guilt. *See* Fed. R. Evid. 403. However, if the
2 Court determines that Dr. Ilg's suicide attempt is admissible for these reasons,
3 exculpatory evidence regarding the suicide attempt should be "admissible to
4 provide a reason other than guilt for the attempted suicide." *Meggison v. State,*
5 540 So. 2d 258, 259 (Fla. Dist. Ct. App. 1989); *People v. Carter*, 312 P.2d 665,
6 671 (Cal. 1957) (error to exclude evidence that "provided an explanation for
7 defendant's attempted suicide other than that offered by the prosecution").
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13 RESPECTFULLY SUBMITTED this 8th day of July, 2022.
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15 By: /s/ Andrew M. Wagley
16 Carl J. Oreskovich, WSBA #12779
17 Andrew M. Wagley, WSBA #50007
18 *Attorneys for Ronald C. Ilg, MD*
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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all attorneys of record in this matter.

EXECUTED in Spokane, Washington this 8th day of July, 2022.

By: /s/ Jodi Dineen
Jodi Dineen, Paralegal